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APR 28 2005

In re Application of :
Machina et al. :
Application No. 10/648,847 :
Filed: August 27, 2003 :
Attorney Docket No. APTI:066 :

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition under 37 CFR §1.137(a), filed December 14, 2004. This petition is being treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment.

The petition to withdraw the holding of abandonment is **GRANTED**.
The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

This application became abandoned for failure to timely submit a response to the Notice to File Missing Parts mailed January 2, 2004. The notice set an extendable 2 month period for reply. No extensions of time pursuant to 37 CFR 1.136(a) were obtained. Accordingly, this application was held abandoned on March 2, 2004. A Notice of Abandonment was mailed November 3, 2004.

Petitioner states a response and a request for a four month extension of time were mailed on July 2, 2004. In response to the Notice of Abandonment petitioner conducted a search and discovered the post card mailed with the response had not been returned. A review of the deposit account showed the authorized fees had not been charged. Petitioner has submitted a copy of the response and the request for extension of time which contains a certificate of mailing of July 2, 2004 in keeping with 37 CFR 1.8.¹.

¹1.8 Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(I) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in

Based on the facts stated in the instant petition, and the corroborative evidence provided, it is concluded that the holding of abandonment was improperly imposed.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

No petition fee has been charged and none is due.

This application is being forwarded to the Office of Initial Patent Examination for processing into a patent.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant
Petitions Attorney
Office of Petitions

accordance with § 1.6(d); and
(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.